

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA**

**MILLARD GUTTER COMPANY, a
Corporation d/b/a MILLARD ROOFING
AND GUTTER,**

Plaintiff,

V.

**CONTINENTAL CASUALTY, a/k/a
CNA, a/k/a or d/b/a CONTINENTAL
INSURANCE COMPANY,**

Defendant.

Case No. _____

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant The Continental Insurance Company (“CIC” or “Defendant”) hereby removes to this Court, pursuant to 28 U.S.C. § 1441(b), the state court action described below:

1. On April 9, 2018, Plaintiff Millard Gutter Company dba Millard Roofing and Gutter (“Plaintiff”) filed a complaint in District Court of Douglas County, Nebraska against Defendant for breach of contract and failure to include Millard Roofing, as an assignee on funds paid to the named insured, Midwest Screw Products, Inc. and for attorney’s fees. The action is entitled *Millard Gutter Company, a Corporation d/b/a Millard Roofing and Gutter v. Continental Casualty a/k/a CNA, a/k/a or d/b/a Continental Insurance Company*, Case No. CI 18-3035 (“the State Court Action”). A true and correct copy of the Complaint served upon Defendant in this action is attached as Exhibit “A.”

2. Defendant was served with a copy of the Complaint via certified mail on October 9, 2018. True and correct copies of the Summons and Service Return are attached as Exhibits “B” and “C”. True and correct copies of all other papers filed in the State Court Action are attached as Exhibit “D.”

3. This Notice of Removal in accordance with 28 U.S.C. 1446(b) is timely

filed within thirty (30) days after receipt by or service on Defendant of the initial pleading or summons.

4. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(a)(1), and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441(b) because it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

5. Complete diversity exists pursuant to 28 U.S.C. §1332(c)(1). Plaintiff Millard Roofing is, and was at the time of the filing of the State Court Action, a Nebraska corporation with its principal place of business in Omaha, Nebraska. Defendant is, and was at the time of the filing of the State Court Action, a Pennsylvania corporation. Defendant's principal place of business is in Radnor, Pennsylvania.

6. Removal is properly made under 28 U.S.C. §1446(c)(2) because Plaintiff seeks to recover from Defendant in excess of the jurisdictional minimum.

7. The State Court action may be removed to this Court, pursuant to 28 U.S.C. §§1332, 1441, and 1446, as the "district . . . embracing the place where such action is pending."

8. A copy of this Notice of Removal is being served upon Plaintiff through his attorneys of record and upon the Clerk of the District Court of Douglas County, Nebraska, as required by the provisions of 28 U.S.C. §1446(d). A true and correct copy of the related and corresponding Notice of Filing of Notice of Removal of Civil Action, which is to be filed in the State Court Action, is marked Exhibit "E", attached (without exhibits) and by this reference made a part hereof.

9. Defendant requests trial of the above-entitled action in Omaha, Nebraska.

10. Defendant expressly reserves all defenses to Plaintiff's claims, including but not limited to all defenses based in contract, law, equity, statute, constitution, jurisdiction, or immunity, any other defense or avoidance, and does not waive any defenses by virtue of this removal.

WHEREFORE, Defendant request the State Court Action now pending in the District Court of Douglas County, Nebraska, Case No. CI 18-3035, be removed for determination to the United States District Court for the District of Nebraska.

THE CONTINENTAL INSURANCE COMPANY

By: /s/ Gerald L. Friedrichsen

Gerald L. Friedrichsen (#15898)
Fitzgerald, Schorr, Barmettler & Brennan,
P.C. 10050 Regency Circle, Suite 200
Omaha, Nebraska 68114-3794
(402) 342-1000
gfriedrichsen@fitzlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2018, I filed the foregoing Notice of Removal with the Clerk of the Court and mailed a copy to the following via regular United States first-class mail, postage prepaid:

Theodore Boecker, Esquire
Boecker Law, P.C., L.L.O.
11225 Davenport Street
Suite 100
Omaha, NE 68154
(402) 933-9500
FAX (402) 933-7983
Attorney for Plaintiff

/s/ Gerald L. Friedrichsen

Image ID:
D00569615D01

SUMMONS

Doc. No. 569615

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Millard Gutter Company v. Continental Casualty Insurance

Case ID: CI 18 3035

TO: Continental Casualty Insurance
DBA: Continental Insurance Company DBA: CNA

You have been sued by the following plaintiff(s):

Millard Gutter Company

Received Law Dept.

OCT 09 2018

Plaintiff's Attorney: Theodore R Boecker Jr
Address: 11225 Davenport Street, Ste 100
Omaha, NE 68154

Telephone: (402) 933-9500

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: OCTOBER 4, 2018 BY THE COURT:

John M. Friend
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

BY: Foreign Officer
Method of service: Designated Delivery

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

E2951494

EXHIBIT A

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI180003035

Transaction ID: 0006695458

Filing Date: 04/09/2018 11:58:51 PM CDT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MILLARD GUTTER COMPANY, a)	CASE NO: CI
Corporation d/b/a MILLARD ROOFING)	
AND GUTTER,)	
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
CONTINENTAL CASUALTY, a/k//a)	
CNA, a/k/a or d/b/a CONTINENTAL)	
INSURANCE COMPANY,)	
Defendant.)	

COMES NOW, Millard Gutter Company d/b/a Millard Roofing and Gutter, by and through its counsel, and for its Complaint against the Defendant CNA Insurance Company of Nebraska a/k/a CNA Insurance a/k/a CNA, to state and allege as follows:

1. Millard Roofing and Gutter (herein sometimes "Millard Roofing") is a Nebraska corporation with its principal place of business at 14545 Industrial Road, Omaha, Nebraska 68144 doing business in Omaha, Douglas County, Nebraska and elsewhere.
2. Defendant Continental Casualty a/k/a CNA a/k/a or d/b/a Continental Insurance Company is an insurance company doing business in Omaha, Douglas County, Nebraska, and elsewhere (hereinafter referred to as CNA).
3. Millard Roofing is the assignee of various insured property owners, who purchased insurance from Defendant, including David Schroeder and Midwest Screw Products, Inc. Such insureds of CNA have assigned their right to any proceeds under policies of insurance issued by CNA to Millard Roofing.

EXHIBIT A

4. Millard Roofing forwarded a copy of an assignment of rights under the policies, including the right to proceeds, executed by each of the insureds to CNA associated with the 2013 storms.
5. Pursuant to Nebraska law the subject assignments are valid assignments of the right to proceeds under an insurance policy issued by CNA.
6. Pursuant to the policies, CNA was obligated to pay for loss to the insureds' property resulting from any peril not otherwise excluded within the policies.
7. The insureds sustained loss due to a storm occurring in 2013, which included damage arising from wind, hail and/or rain. The damages suffered by the insureds are covered under the policies issued by CNA.
8. The policies were in full force and effect at the time of the losses.
9. The insureds and/or Millard Roofing, as assignee, promptly and properly made claims to CNA for insurance benefits under the policies and fulfilled all of their post loss duties required of the insured under the policies, except any obligations which may have been prevented or waived by CNA.
10. As assignee, Millard Roofing has satisfied all of those matters and things properly required of it under the policies, including substantial compliance with all conditions precedent or, alternatively, performance of all obligations that have not been excused by virtue of the acts, representations or conduct of CNA.
11. Millard Roofing has made demand upon CNA to advise it of any further information or documentation that it needs to process the claims of the insured and CNA has failed to identify any information, documents or other matters which it needs to process the claims.

12. Notwithstanding the fact that Millard Roofing obtained valid assignments of rights under the policies issued by CNA, CNA has failed to pay Millard Roofing amounts due under the policies, despite notice of the assignment of the claims to Millard Roofing.
13. Pursuant to the terms of the policies and Nebraska law, CNA has a contractual obligation to pay the full amount of the losses, including the cost to repair, restore or replace the damages, less the applicable deductible.
14. CNA has breached the policies by failing to pay to Millard Roofing all benefits due and owing under the policies.
15. CNA's failure to make direct payment to Millard Roofing is unlawful and contrary to the terms of the assignment.
16. CNA is not entitled to a set off or offset of any monies paid to any of the insureds, or not paid to Millard Roofing.
17. Despite notice of the assignments, CNA has failed to make direct payment to Millard Roofing and/or including Millard Roofing as a payee on any checks or other payments for the loss.
18. CNA's failure to include Millard Roofing on any undisputed funds paid to the insureds constitutes a breach of contract.
19. CNA's failure to pay all insurance benefits owed under the policies has caused damage to Millard Roofing.
20. Pursuant to Neb.Rev.Stat. § 44-359, a party with an interest in an insurance policy is entitled to recover attorney fees as part of a judgment.

21. Millard Roofing, by virtue of the assignments, is a valid beneficiary of the insurance policies and upon recovery of a judgment is also entitled to an award of attorney fees and costs pursuant to Neb.Rev.Stat §44-359, as well as any other applicable provision of law.
22. As a direct and proximate result of CNA's breach of contract and refusal to pay the valid claims of Millard Roofing, Millard Roofing has, and will occur, attorney fees in an amount to be determined, which should be awarded as part of the judgment.
23. Because Millard Roofing's claim arises pursuant to an instrument in writing, Millard Roofing is entitled to interest withheld by CNA at the rate of twelve percent (12%) per annum from the date of invoicing of each claim.
24. As a direct and proximate result of the bad faith conduct of CNA, Millard Roofing has also been deprived of the benefits owed under the insurance policies including prompt payment, there by justifying an award of prejudgment interest from the date the claim was submitted to CNA for each of the respective insureds. CNA has wrongfully retained money due to Millard Roofing and engaged in an unreasonable delay of payment.
25. Millard Roofing has been harmed by virtue of the wrongful retention and refusal to release funds, and is thereby entitled to an award of pre-judgment interest to compensate it for the wrongful retention and withholding of funds by CNA.

WHEREFORE, Plaintiff prays that this Court enter a judgment against Defendant for all of its general and special damages in an amount to be determined at trial, together with an award of pre and post-judgment interest, attorney fees and costs, and any other relief allowed under law.

MILLARD GUTTER COMPANY, a
Corporation d/b/a MILLARD ROOFING
AND GUTTER, Plaintiff

/s/ Theodore R. Boecker, Jr.

By:

Theodore R. Boecker, Jr., NE #20346
BOECKER LAW, P.C., L.L.O.
11225 Davenport Street, Suite 100
Omaha, Nebraska 68154
Tele: (402) 933-9500
Fax: (402) 933-7983
Email: boeckerlaw@msn.com
ATTORNEY FOR PLAINTIFF

EXHIBIT A

Part # 158297-205 / 7.770-3 1209 07/19

SHIP DATE: 04OCT18
ACTWGT: 0.20 LB
CAD: 006983423/6SFE1904

ORIGIN ID:ALAA (402) 933-9500
TED BOESHE
11225 DAVENPORT ST STE 100

UNITED STATES OF
TO STATHY DARCY, REGISTERED AGENT
CONTENITAL CASUALTY INSURANCE
333 S HABASH AVE

CHICAGO IL 60604

REF ID: A66888

2123d

FedEx
Express

REL# 3785346

FRI - 05 OCT 3:00P
STANDARD OVERNIGHT

TAK# 7830 9701 3384

60604
ORD
IL-US

XH CHIA



Express

RT449
FZ

1 15:00 A 3384 10.05

EXHIBIT A

Image ID:
D00569615D01

SUMMONS

Doc. No. 569615

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Millard Gutter Company v. Continental Casualty Insurance

Case ID: CI 18 3035

TO: Continental Casualty Insurance
DBA: Continental Insurance Company DBA: CNA

FILED BY
Clerk of the Douglas District Court
10/04/2018

You have been sued by the following plaintiff(s):

Millard Gutter Company

Plaintiff's Attorney: Theodore R Boecker Jr
Address: 11225 Davenport Street, Ste 100
Omaha, NE 68154

Telephone: (402) 933-9500

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: OCTOBER 4, 2018

BY THE COURT:

John M. Friend
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

BY: Foreign Officer
Method of service: Designated Delivery

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

EXHIBIT B

SERVICE RETURN

Doc. No. 569615

Douglas District Court
1701 Farnam
Omaha NE 68183

To: Foreign Officer

Case ID: CI 18 3035 Millard Gutter Com v. Continental Casual

Received this Summons on _____, _____. I hereby certify that on
_____, _____ at _____ o'clock ____M. I served copies of the Summons
upon the party:

by _____

as required by Nebraska state law.

Service and return \$ _____

Copy _____

Mileage _____miles _____

TOTAL \$ _____

Date: _____ BY: _____
(Sheriff or authorized person)

**CERTIFIED MAIL
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,

TO THE PARTY: _____

At the following address: _____

on the _____ day of _____, as required by Nebraska state law.

Postage \$ _____ Attorney for: _____

The return receipt for mailing to the party was signed on _____, _____.

To: Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

From: Theodore R Boecker Jr
11225 Davenport Street, Ste 100
Omaha, NE 68154

ATTACH RETURN RECEIPT & RETURN TO COURT

EXHIBIT B

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI180003035

Transaction ID: 0007594914

Filing Date: 10/12/2018 5:21:56 AM CDT

SERVICE RETURN

Douglas District Court
1701 Farnam
Omaha NE 68183

To: Foreign Officer

Case ID: CI 18 3035 Millard Gutter Com v. Continental Casual

Received this Summons on _____, I hereby certify that on
_____ at _____ o'clock __M. I served copies of the Summons
upon the party:

by _____

as required by Nebraska state law.

Service and return \$ _____

Copy _____

Mileage _____ miles

TOTAL \$ _____

Date: _____ BY: _____
(Sheriff or authorized person)

**CERTIFIED MAIL
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,
TO THE PARTY: Continental Casualty Insurance

At the following address: c/o Stathy Darcy

333 South Wabash Ave

Chicago, IL 60604

on the 4th day of October 2018, as required by Nebraska state law.

Postage \$ 26.20 Attorney for: Plaintiff

The return receipt for mailing to the party was signed on October 5, 2018.

To: Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

From: Theodore R Boecker Jr
11225 Davenport Street, Ste 100
Omaha, NE 68154

ATTACH RETURN RECEIPT & RETURN TO COURT

EXHIBIT C

CNA



Shipping

Tracking

Printing Services

Locations

Support

Sign In

TRACK ANOTHER SHIPMENT

783097013384

Delivered
Friday 10/05/2018 at 9:24 am

DELIVERED

Signed for by: L.BUTLER

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM

OMAHA, NE US

TO

CHICAGO, IL US

Request Proof of Delivery

For detailed proof of delivery, enter the 9-digit shipper or payer FedEx account number associated with this shipment.

TRACKING NO. OR NICKNAME

DESTINATION

SIGNATURE IMAGE

ACCOUNT NUMBER

783097013384

Chicago, IL

Yes

ACCOUNT NUMBER

View/print letter

SUBMIT

Ask FedEx

OUR COMPANY

MORE FROM FEDEX

LANGUAGE

EXHIBIT C

Certificate of Service

I hereby certify that on Friday, October 12, 2018 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

Continental Casualty Insurance service method: No Service

Signature: /s/ Theodore Boecker (Bar Number: 20346)

Image ID:
D00547174D01

SUMMONS

Doc. No. 547174

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Millard Gutter Company v. Continental Casualty Insurance

Case ID: CI 18 3035

TO: Continental Casualty Insurance
DBA: Continental Insurance Company DBA: CNA

FILED BY
Clerk of the Douglas District Court
06/18/2018

You have been sued by the following plaintiff(s):

Millard Gutter Company

Plaintiff's Attorney: Theodore R Boecker Jr
Address: 11225 Davenport Street, Ste 100
Omaha, NE 68154

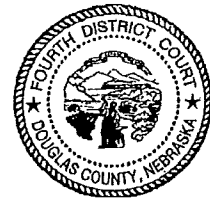
Telephone: (402) 933-9500

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: JUNE 18, 2018

BY THE COURT:

John M. Friend
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

EXHIBIT D

SERVICE RETURN

Doc. No. 547174

Douglas District Court
1701 Farnam
Omaha NE 68183

To:

Case ID: CI 18 3035 Millard Gutter Com v. Continental Casual

Received this Summons on _____, _____. I hereby certify that on
_____, _____ at _____ o'clock __M. I served copies of the Summons
upon the party:

by _____

as required by Nebraska state law.

Service and return \$ _____

Copy _____

Mileage _____ miles _____

TOTAL \$ _____

Date: _____ BY: _____
(Sheriff or authorized person)

**CERTIFIED MAIL
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,

TO THE PARTY: _____

At the following address: _____

on the _____ day of _____, as required by Nebraska state law.

Postage \$ _____ Attorney for: _____

The return receipt for mailing to the party was signed on _____, _____.

To: Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

From: Theodore R Boecker Jr
11225 Davenport Street, Ste 100
Omaha, NE 68154

ATTACH RETURN RECEIPT & RETURN TO COURT

EXHIBIT D

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI180003035

Transaction ID: 0007022106

Filing Date: 06/18/2018 10:46:05 AM CDT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MILLARD GUTTER COMPANY, a)	CASE NO: CI 18-3035
Corporation d/b/a MILLARD ROOFING)	
AND GUTTER,)	
)	
Plaintiff,)	
)	
vs.)	PRAECIPE
)	
CONTINENTAL CASUALTY, a/k//a)	
CNA, a/k/a or d/b/a CONTINENTAL)	
INSURANCE COMPANY,)	
Defendant.)	

TO: The Clerk of Douglas County District Court

Please issue a Summons and Complaint upon the Defendant Continental Casualty at the following address:

Continental Casualty Company
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

for service via United States Certified Mail, return receipt requested.

MILLARD GUTTER COMPANY, a
Corporation d/b/a MILLARD ROOFING
AND GUTTER, Plaintiff

/s/ Theodore R. Boecker, Jr.

By:

Theodore R. Boecker, Jr., NE #20346
BOECKER LAW, P.C., L.L.O.
11225 Davenport Street, Suite 100
Omaha, Nebraska 68154
Tele: (402) 933-9500
Fax: (402) 933-7983
Email: boeckerlaw@msn.com
ATTORNEY FOR PLAINTIFF

EXHIBIT D

Image ID: D00558879D01

NOTICE OF INTENT TO DISMISS

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA

Millard Gutter Company v. Continental Casualty Insurance

Case ID: CI 18 3035

Pursuant to Rule 4-10, this notice is sent to inform each party that, within thirty (30) days from the date of this notice, you must submit a Proposed Scheduling Order(PSO) indicating: a) Date of Scheduling Conference b) Trial Scheduled/Trial Held date, or, c) Request that a Pretrial conference be held and necessary discovery deadlines set, or the above-captioned case will be dismissed for lack of prosecution.

Procedural Process to Avoid Dismissal

Pursuant to Rule 4-10(A), one original Proposed Scheduling Order shall be presented to the District Court Administrator for review to ensure that all information required by these rules has been provided. The District Court Administrator-approved Proposed Scheduling Order will be forwarded for review by the judge to whom the case is assigned. The parties may also request a scheduling conference, which must be held prior to the case dismissal date. Either of the above-mentioned events shall remove the case from the case progression dismissal list. The Court will not consider motions or stipulations to extend or excuse the filing of a Joint Proposed Scheduling Order.

Case Progression Dismissals

Pursuant to Rule 4-10(C), when a case has been dismissed for lack of prosecution, the judge to whom the case is assigned has the discretion to reinstate the case. However, a case can be reinstated only upon (1) the showing of good cause for reinstatement, (2) the contemporaneous submission of a PSO; and (3) the filing of a Signed Scheduling Order. [If a PSO does not accompany the request for reinstatement of the dismissed case, the case will automatically be dismissed as soon as it has been reinstated.]

If you have any questions or concerns about this notice, please contact District Court Administrator Doug Johnson either by email (djohnson@dc4dc.com) or by telephone (402-444-7004). The Proposed Scheduling Order can be found on the District Court website www.dc4dc.com.

Date: August 8, 2018



District Court Administrator

Theodore R Boecker Jr
boeckerlaw@msn.com

EXHIBIT D

Image ID: D00558878D01

NOTICE OF INTENT TO DISMISS

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA

Millard Gutter Company v. Continental Casualty Insurance

Case ID: CI 18 3035

Pursuant to Rule 4-10, this notice is sent to inform each party that, within thirty (30) days from the date of this notice, you must submit a Proposed Scheduling Order(PSO) indicating: a) Date of Scheduling Conference b) Trial Scheduled/Trial Held date, or, c) Request that a Pretrial conference be held and necessary discovery deadlines set, or the above-captioned case will be dismissed for lack of prosecution.

Procedural Process to Avoid Dismissal

Pursuant to Rule 4-10(A), one original Proposed Scheduling Order shall be presented to the District Court Administrator for review to ensure that all information required by these rules has been provided. The District Court Administrator-approved Proposed Scheduling Order will be forwarded for review by the judge to whom the case is assigned. The parties may also request a scheduling conference, which must be held prior to the case dismissal date. Either of the above-mentioned events shall remove the case from the case progression dismissal list. The Court will not consider motions or stipulations to extend or excuse the filing of a Joint Proposed Scheduling Order.

Case Progression Dismissals

Pursuant to Rule 4-10(C), when a case has been dismissed for lack of prosecution, the judge to whom the case is assigned has the discretion to reinstate the case. However, a case can be reinstated only upon (1) the showing of good cause for reinstatement, (2) the contemporaneous submission of a PSO; and (3) the filing of a Signed Scheduling Order. [If a PSO does not accompany the request for reinstatement of the dismissed case, the case will automatically be dismissed as soon as it has been reinstated.]

If you have any questions or concerns about this notice, please contact District Court Administrator Doug Johnson either by email (djohnson@dc4dc.com) or by telephone (402-444-7004). The Proposed Scheduling Order can be found on the District Court website www.dc4dc.com.

Date: August 8, 2018



District Court Administrator

Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

EXHIBIT D

Image ID:
D00560420D01

SUMMONS

Doc. No. 560420

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Millard Gutter Company v. Continental Casualty Insurance

Case ID: CI 18 3035

TO: Continental Casualty Insurance
DBA: Continental Insurance Company DBA: CNA

FILED BY
Clerk of the Douglas District Court
08/16/2018

You have been sued by the following plaintiff(s):

Millard Gutter Company

Plaintiff's Attorney: Theodore R Boecker Jr
Address: 11225 Davenport Street, Ste 100
Omaha, NE 68154

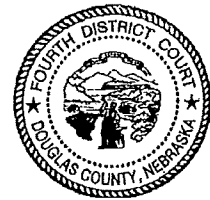
Telephone: (402) 933-9500

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: AUGUST 16, 2018

BY THE COURT:

John M. Friend
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

EXHIBIT D

SERVICE RETURN

Doc. No. 560420

Douglas District Court
1701 Farnam
Omaha NE 68183

To:

Case ID: CI 18 3035 Millard Gutter Com v. Continental Casual

Received this Summons on _____, _____. I hereby certify that on
_____, ____ at _____ o'clock __M. I served copies of the Summons
upon the party:

by _____

as required by Nebraska state law.

Service and return \$ _____

Copy _____

Mileage _____ miles _____

TOTAL \$ _____

Date: _____ BY: _____
(Sheriff or authorized person)

**CERTIFIED MAIL
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,

TO THE PARTY: _____

At the following address: _____

on the _____ day of _____, as required by Nebraska state law.

Postage \$ _____ Attorney for: _____

The return receipt for mailing to the party was signed on _____, _____.

To: Continental Casualty Insurance
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

From: Theodore R Boecker Jr
11225 Davenport Street, Ste 100
Omaha, NE 68154

ATTACH RETURN RECEIPT & RETURN TO COURT

EXHIBIT D

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI180003035

Transaction ID: 0007309700

Filing Date: 08/16/2018 10:51:39 AM CDT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MILLARD GUTTER COMPANY, a)	CASE NO: CI 18-3035
Corporation d/b/a MILLARD ROOFING)	
AND GUTTER,)	
)	
Plaintiff,)	
)	
vs.)	PRAECIPE
)	
CONTINENTAL CASUALTY, a/k/a)	
CNA, a/k/a or d/b/a CONTINENTAL)	
INSURANCE COMPANY,)	
Defendant.)	

TO: The Clerk of Douglas County District Court

Please issue a Summons and Complaint upon the Defendant Continental Casualty at the following address:

Continental Casualty Company
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

for service via United States Certified Mail, return receipt requested.

MILLARD GUTTER COMPANY, a
Corporation d/b/a MILLARD ROOFING
AND GUTTER, Plaintiff

By: /s/ Theodore R. Boecker, Jr.
Theodore R. Boecker, Jr., NE #20346
BOECKER LAW, P.C., L.L.O.
11225 Davenport Street, Suite 100
Omaha, Nebraska 68154
Tele: (402) 933-9500
Fax: (402) 933-7983
Email: boeckerlaw@msn.com
ATTORNEY FOR PLAINTIFF

EXHIBIT D

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MILLARD GUTTER COMPANY,
Plaintiff,

vs.

CONTINENTAL CASUALTY
Defendants.

PROPOSED SCHEDULING ORDER

CASE # CI 18-3035

JUDGE COFFEY

TYPE OF CASE: LAW EQUITY (parties dispute)

CHOOSE EITHER A, B, OR C:

A. The parties have been unable to agree upon a Proposed Scheduling Order and are required to appear at a scheduling Conference hearing which has been set for 11/18/2018, 2018 at 9:00 a.m.. The party submitting this form shall properly notify the other party or parties.

B. Trial Scheduled/Trial Held Date: _____

C. The parties to this action have conferred and agree as follows:

1. The parties are requesting a pre-trial conference yes no .
If so, the parties have contacted the Court and it is set for _____, 20__ at ____:____.
2. The parties shall complete fact discovery on _____.
3. The parties shall file any amended pleadings and shall join any additional parties to the action by not later than _____.
4. The parties shall designate expert witnesses, if any, including curriculum vitae, and the subject matter about which each such expert is expected to testify by the following dates unless the parties mutually agree otherwise to extend deadlines for expert witnesses. Plaintiff expert(s) by: _____.
All discovery shall be completed on such expert witnesses, including depositions, by not later than _____.
Defendant's expert(s) by: _____.
All discovery shall be completed on such expert witnesses, including Depositions, by not later than _____.
5. The parties shall complete all agreed-upon means/methods of alternative dispute resolution by not later than _____.
6. The parties shall file all non-dispositive pre-trial motions by not later than _____, and the parties shall file all dispositive pre-trial motions by not later than _____.
7. The parties shall identify (a) all documents which may be offered in evidence, and (b) all witnesses who may be called to testify, including each witness's name and address, by not later than _____.
8. The parties are requesting a jury trial non-jury/bench trial. (parties dispute)
9. Local Rule 4-3 shall be complied with no later than (90) days from the date this form is presented to the Court Administrator. Parties shall be responsible to report to Conciliation Court for compliance.
10. The parties must be prepared for trial by not later than _____.
11. The anticipated length of the trial will be _____.
12. The original has been presented to the Court Administrator for review.
Dated this 7th day of Sept , 20 18 .

☐ Check if Additional parties, and identify on back of this form



Theodore R. Boecker, Jr. NE #20346

Plaintiff's/Petitioner's Attorney [Sign and Print Name]
Address 11225 Davenport St, #100, Omaha NE 68154
Telephone Number 402-933-9500

Defendant's/Respondent's Attorney [Sign and Print Name]
Address
Telephone Number

IT IS SO ORDERED this _____ day of _____, 2018.
BY THE COURT:

District Court Judge REV. 05/19/14

REV. CT. ADMIN.

Dated 9-7-18

COPY

EXHIBIT D

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI180003035

Transaction ID: 0007555994

Filing Date: 10/04/2018 02:29:18 PM CDT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MILLARD GUTTER COMPANY, a)
Corporation d/b/a MILLARD ROOFING)
AND GUTTER,)

Plaintiff,)

vs.)

PRAECIPE

CONTINENTAL CASUALTY, a/k/a)
CNA, a/k/a or d/b/a CONTINENTAL)
INSURANCE COMPANY,)
Defendant.)

TO: The Clerk of Douglas County District Court

Please issue a Summons and Complaint upon the Defendant Continental Casualty at the
following address:

Continental Casualty Company
c/o Stathy Darcy
333 South Wabash Ave
Chicago, IL 60604

for service via designated delivery service (Fed. Ex.).

MILLARD GUTTER COMPANY, a
Corporation d/b/a MILLARD ROOFING
AND GUTTER, Plaintiff

/s/ Theodore R. Boecker, Jr.

By:

Theodore R. Boecker, Jr., NE #20346
BOECKER LAW, P.C., L.L.O.
11225 Davenport Street, Suite 100
Omaha, Nebraska 68154
Tele: (402) 933-9500
Fax: (402) 933-7983
Email: boeckerlaw@msn.com
ATTORNEY FOR PLAINTIFF

EXHIBIT D

All State Agencies | All State Services | Select Language▼

Nebraska Judicial Branch

Case Summary

In the District Court of Douglas County
 The Case ID is CI 18 0003035
 Millard Gutter Com v. Continental Casual
 The Honorable J. M Coffey, presiding.
 Classification: Contract Disputes
 Filed on 04/09/2018
 This case is Open as of 04/09/2018

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE	
Millard Gutter Company	Theodore R Boecker Jr
11225 Davenport Street	11225 Davenport Street, Ste 1
Suite 100	
Omaha NE 68154	Omaha NE 68154
	402-933-9500
Alias is Millard Roofing and Gutter	
Defendant ACTIVE	
Continental Casualty Insurance	
c/o Stathy Darcy	
333 South Wabash Ave	
Chicago IL 60604	
Alias is Continental Insurance Company	
CNA	

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	04/09/2018	\$35.00
Plaintiff	Filing Fee - State	04/09/2018	\$1.00
Plaintiff	Automation Fee	04/09/2018	\$8.00
Plaintiff	NSC Education Fee	04/09/2018	\$1.00
Plaintiff	Dispute Resolution Fee	04/09/2018	\$0.75
Plaintiff	Indigent Defense Fee	04/09/2018	\$3.00
Plaintiff	Uniform Data Analysis Fee	04/09/2018	\$1.00
Plaintiff	J.R.F.	04/09/2018	\$6.00
Plaintiff	Filing Fee-JRF	04/09/2018	\$6.00
Plaintiff	Legal Aid/Services Fund	04/09/2018	\$6.25
Plaintiff	Complete Record	04/09/2018	\$15.00

Nebraska Judicial Branch - Case Search

<https://www.nebraska.gov/justice/case.cgi>

Incurring By	Account	Date	Amount
Plaintiff	Service Fees	10/12/2018	\$26.20

Financial Activity

No trust money is held by the court
No fee money is held by the court

Payments Made to the Court

Receipt	Type	Date	For	Amount
294313	Electronic Trans	04/10/2018	Millard Gutter Company	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

Register of Actions

10/12/2018 Return Summons/Alias Summons
The document number is 00569615

JB

Served 10/05/2018
Designated Delivery
Image ID N18285DDQD01

10/04/2018 Summons Issued on Continental Casualty Insurance
The document number is 00569615

E-MAILED: boeckerlaw@msn.com
Image ID D00569615D01

10/04/2018 Praecipe-Out St Summons/Alias
This action initiated by party Millard Gutter Company

MM

Image ID N18277DBED01

09/07/2018 Proposed Scheduling Order

This action initiated by Theodore R Boecker Jr
Image ID 001700336D01

08/16/2018 Summons Issued on Continental Casualty Insurance
The document number is 00560420
E-MAILED: boeckerlaw@msn.com
Image ID D00560420D01

08/16/2018 Praecipe-Out St Summons/Alias
This action initiated by party Millard Gutter Company

MM
Image ID N18228Z7AD01

08/08/2018 Notice Issued
The document number is 00558879
Notice of Intent to Dismiss
Theodore R Boecker Jr boeckerlaw@msn.com
Image ID D00558879D01

08/08/2018 Notice Issued
The document number is 00558878
Notice of Intent to Dismiss
Continental Casualty Insurance
Image ID D00558878D01

06/18/2018 Summons Issued on Continental Casualty Insurance

The document number is 00547174
E-MAILED: boeckerlaw@msn.com
Image ID D00547174D01

06/18/2018 Praecipe-Out St Summons/Alias
This action initiated by party Millard Gutter Company
as
Image ID N18169G24D01

04/09/2018 Complaint-Praecipe
This action initiated by party Millard Gutter Company
ts no praecipe filed
Image ID N18099X6ID01